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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/806,700

03/23/2004

Homer W. Fogle JR.

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7590

12/13/2006

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
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EXAMINER

SLITERIS, JOSELYNN Y

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,700

Applicant(s)

FOGLE, HOMER W.

Examiner

Joselynn Y. Sliteris

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 4,7-9,13,15,18,19 and 21-24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,11,12,14,16,17,20,26 and 29-32 is/are rejected.
- 7) ☒ Claim(s) 25,27,28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 4, 7-9, 13, 15, 18, 19, and 21-24 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/11/06.

Claim Objections

2. Claims 16 and 17 are objected to because of the following informality: in claim 16 line 2 before "tool", --the-- should be inserted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11, 12, 14, 16, 17, 20, 26, and 29-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In claim 11 lines 12 & 13, "the pyrotechnic device" lacks proper antecedent basis in the claim.

6. In both claims 31 & 32 lines 1-2, "the intervening void" lacks proper antecedent basis in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 5, 6, 11, 12, 14, 16, and 17 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Canterbury (US Patent Application Publication 2004/0212182), as cited by applicant.

9. Regarding claims 1-3, 5, and 6, Canterbury discloses an inflator 10 as in the present invention comprising:

a housing 11 including at least one exit port 14;

a container 30 in which is stored a fluid under pressure 21, the container 30 being located in the housing 11 and having opposite first 31 and second 32 ends;

a tool 37 located in the housing 11 adjacent the first end 31 of the container 30 for opening the first end 31 of the container 30;

a pyrotechnic device 22 located adjacent the second end 32 of the container 30 and actuatable for propelling the container 30 through the housing 11 and into contact with the tool 37 so as to cause the tool 37 to open the first end 31 of the container 30 and enable a flow of fluid 21 from the container 30 toward the at least one exit port 14 of the housing 11;

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a breech block (spacer- paragraph [0013]) located in the housing adjacent the second end of the container, the breech block being adapted to support the pyrotechnic device and maintain the container and the pyrotechnic device in spaced relation;

wherein the flow of fluid 21 from the container 30 acts to propel the container 30 back through the housing 11 in a direction away from the tool 37, a portion (spacer- paragraph [0013]) of the housing 11 forming at least part of a stop mechanism for limiting movement of the container 30 away from the tool 37;

wherein the portion of the housing that forms at least part of the stop mechanism (spacer-paragraph [0013]) is a breech block, the breech block engaging the second end 32 of the container 30 to stop movement of the container 30 away from the tool 37;

further including a member for resisting 35 movement of the container 30 toward the tool;

wherein the member is a spring that biases the container 30 away from the tool 37.

10. Regarding claims 11, 12, 14, 16, and 17, Canterbury discloses an inflator 10 as in the present invention comprising:

a housing 11 including at least one exit port 14;

a container 30 in which is stored a fluid under pressure 21, the container 30 being located in the housing 11 and having opposite first 31 and second 32 ends;

a tool 37 located in the housing 11 adjacent the first end 31 of the container 30 for opening the first end 31 of the container 30; and

a device 22 that is actuatable for propelling the container 30 through the housing 11 and into contact with the tool 37 so as to cause the tool 37 to open the first end 31 of the container 30 and enable a flow of fluid 21 from the container 30 toward the at least one exit port 14 of the housing 11;

a breech block (spacer- paragraph [0013]) located in the housing adjacent the second end of the container, the breech block being adapted to support the pyrotechnic device and maintain the container and the pyrotechnic device in spaced relation;

a portion of the housing (spacer-paragraph [0013]) forming at least part of a stop mechanism for limiting movement of the container 30 away from the tool 37 in response to the flow of fluid 21 from the container 30 acting to propel the container 30 away from the tool 37;

wherein the device 22 is a pyrotechnic initiator that is located adjacent the second end 32 of the container 30;

wherein the portion of the housing that forms at least part of the stop mechanism (spacer-paragraph [0013]) is the breech block, the breech block engaging the second end 32 of the container 30 to stop movement of the container 30 away from the tool 37;

further including a member for resisting movement 35 of the container 30 toward the tool 37;

wherein the member is a spring that biases the container 30 away from the tool 37.

Allowable Subject Matter

11. Claim 10 is allowed.
12. Claims 20, 26, and 29-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
13. Claims 25, 27, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments filed 9/20/06 have been fully considered but they are not persuasive.

Applicant argues that "The "spacer" of ¶0013 of the '182 application is not shown in the Figures thereof and the sparse description of the spacer in the text of the '182 application is silent as to the structure of the spacer, whether the spacer supports the igniter, and the nature of the relationship that the spacer creates between the pressure vessel and the igniter. In summary, the '182 application does not disclose that the spacer supports the pyrotechnic device and holds the container and the pyrotechnic device in spaced relation, as presently claimed".

However, examiner disagrees and notes that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only

requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchinson, 69 USPQ 138. Nevertheless, it is the examiner's position that the sparse language of claims 1 and 11 as amended is also silent as to the structure of the breech block and as such, the '182 application does sufficiently disclose that the spacer supports the pyrotechnic device and holds the container and the pyrotechnic device in spaced relation.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joselynn Y. Sliteris whose telephone number is 571-

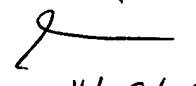
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272-6675. The examiner can normally be reached on Mon, Thurs & Fri 8:30 am - 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Joselynn Y. Slteris
Patent Examiner
Art Unit 3616


11/29/06

JYS
11/29/06


DAVID R. DUNN
PRIMARY EXAMINER